

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

TRACK THREE

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**DEFENDANTS' PROPOSAL FOR (1) JURY INSTRUCTIONS ON APPLICABLE CSA
REGULATIONS AND (2) LIMITING INSTRUCTION ON DEA SETTLEMENTS**

Defendants hereby propose for the Court's consideration (1) jury instructions on the two Controlled Substances Act ("CSA") regulations at issue and (2) a limiting instruction on DEA settlements that have been admitted (over Defendants' objections) at trial.

Attached as Exhibit A are proposed instructions on the two applicable CSA regulations—for distribution and dispensing, respectively. While the Court has correctly precluded witnesses at trial from testifying about what the law requires, the jury must be instructed on the law in order to determine whether any Defendant engaged in "unlawful" conduct. The proposed instructions track the regulatory language and, where relevant, the Court's orders interpreting those regulations. Defendants have provided these proposed instructions to Plaintiffs. Plaintiffs did not agree to the instructions, did not identify any errors or propose any edits, and stated that they do not see a path to any agreed instructions based on Defendants' proposal. Defendants therefore submit these proposed instructions for the Court's consideration.

Attached as Exhibit B is a proposed limiting instruction on DEA settlements that have been admitted over Defendants' objections. This proposed limiting instruction is based on the limiting instruction in *In re: Du Pont De Nemours & Co.*, 2016 EL 659112, at *52-*53 (S.D. Ohio

Feb. 17, 2016)—a decision the Court has cited in considering the admissibility of settlements. *See* Doc. 3052 at 13 n.24. A limiting instruction is necessary to ensure that the jury considers any DEA settlement only for the narrow purposes for which it was admitted and not for any other purpose, including as proof of liability. Defendants provided the proposed limiting instruction to Plaintiffs, but they did not agree to the limiting instruction or propose any edits. Accordingly, Defendants also submit this proposed limiting instruction for the Court’s consideration.

Defendants submit these proposed additional jury instructions without waiving their earlier proposed jury instructions or their objections to the current instructions. Defendants preserve all objections and reserve the right to submit further instructions and objections to the Court’s final jury instructions at a later date.

Date: October 18, 2021

Respectfully submitted,

/s/ Eric R. Delinsky

Eric R. Delinsky
Alexandra W. Miller
Graeme W. Bush
Paul B. Hynes, Jr.
ZUCKERMAN SPAEDER LLP
1800 M Street NW, Suite 1000
Washington, DC 20036
Tel: (202) 778-1800
E-mail: edelinsky@zuckerman.com
E-mail: smiller@zuckerman.com
E-mail: gbush@zuckerman.com
E-mail: phynes@zuckerman.com

*Counsel for CVS Pharmacy, Inc., Ohio
CVS Stores, L.L.C., CVS TN Distribution,
L.L.C., CVS Rx Services, Inc., and CVS
Indiana, L.L.C.*

/s/ Kaspar J. Stoffelmayr

Kaspar J. Stoffelmayr
Brian C. Swanson
Katherine M. Swift
Sharon Desh
Sten Jernudd
BARTLIT BECK LLP
54 West Hubbard Street
Chicago, IL 60654
Tel: (312) 494-4400
Fax: (312) 494-4440
kaspar.stoffelmayr@bartlitbeck.com
brian.swanson@bartlitbeck.com
kate.swift@bartlitbeck.com
sharon.desh@bartlitbeck.com
sten.jernudd@bartlitbeck.com

Alex J. Harris
BARTLIT BECK LLP
1801 Wewatta Street, 12th Floor
Denver, CO 80202
Tel: (303) 592-3100
Fax: (303) 592-3140
alex.harris@bartlitbeck.com

*Counsel for Walgreens Boots Alliance, Inc.;
Walgreen Co., and Walgreen Eastern Co., Inc.*

/s/ John M. Majoras

John M. Majoras
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001-2113
Phone: (202) 879-3939
Fax: (202) 626-1700
Email: jmmajoras@jonesday.com

Tina M. Tabacchi

Tara A. Fumerton
JONES DAY
77 West Wacker
Chicago, IL 60601
Phone: (312) 269-4335
Fax: (312) 782-8585
E-mail: tmtabacchi@jonesday.com
E-mail: tfumerton@jonesday.com

Counsel for Walmart Inc.

/s/ Diane Sullivan

Diane Sullivan
WEIL, GOTSHAL & MANGES LLP
17 Hulfish Street
Suite 201
Princeton, New Jersey 08540
E-mail: Diane.Sullivan@Weil.com
Telephone: (212) 310-8897

Chantale Fiebig

2001 M Street NW, Suite 600
Washington, DC 20036
E-mail: Chantale.Fiebig@Weil.com
Telephone: (202) 682-7200

Robert M. Barnes

Scott D. Livingston
Joshua A. Kobrin
MARCUS & SHAPIRA, LLP
35th Floor, One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219
Phone: (412) 471-3490
Fax: (412) 391-8758
E-mail: rbarnes@marcus-shapira.com
E-mail: livingston@marcus-shapira.com
E-mail: kobrin@marcus-shapira.com

Counsel for Giant Eagle, Inc., and HBC Service Company